

REMARKS

Claims 26-29 and 31-54 are pending in this application. Claims 26, 31, 51, 52 and 53 are independent claims. Claims 27-29 are withdrawn. Claims 1-25 and 30 have been canceled. Claims 32-41 and 43 were previously presented. Claims 45-54 are new. Claims 26, 31, 42 and 44 are currently amended. Applicant believes all payments have been submitted; however, if payment is deficient please debit the Deposit Account 50-1660.

Claims 31 and 41-44

Claims 31 and 41-44 have not been addressed/rejected and thus applicant believes they are in condition for allowance (claim 31 is written in independent form and claims 42 and 44 were amended to depend therefrom).

35 U.S.C § 101 Rejection

Claim 26 and 38-40

The Office rejected claims 26 and 38-40 as being directed to non-statutory subject matter under 35 U.S.C. § 101. Amended claim 26 requires “a dose having at least 10^9 cfu of an isolated bacterium of the genus *Dietzia*”. Applicant has made the above amendment to expedite prosecution of the application and believes “an isolated bacterium” does not read on a product of nature. Applicant respectfully requests the Office withdraw the rejections of claims 26 and 38-40.

35 U.S.C § 103(a) Rejection of Claims 26 and 31-40 – Alkemade et al in view of Mosser and Rainey et al.

Claims 26 and 32-40 were rejected as being unpatentable over Alkemade et al. (6,139,844) in view of Mosser (WO 99/05304) and Rainey et al. While Applicant does not agree with the rejection, in order to expedite prosecution, and without conceding the propriety of the combination of the cited references, Applicant has amended claim 26 as noted above. The references of Alkemade et al., Mosser and Rainey et al., individually or in combination, do not teach, disclose, suggest or render obvious the features of claim 26; particularly the structural features requiring a megadose of an isolated bacterium of the genus *Dietzia*, an active fragment thereof, or a protein secreted therefrom. Therefore, Applicant asserts the references, individually or in combination, fail to render obvious amended claim 26 and the claims depending therefrom (claim 32-40). Even if a reference were to recite a composition having bacteria at such a high dose, it would not be obvious to a person having ordinary skill in the art to use bacteria of the genus *Dietzia*, and to do so at such higher dose. Not until Applicant's disclosure was it known that *Dietzia* was capable of reducing or preventing the symptoms of a disease or syndrome whose causative agent is a mycobacterium, and to use such mega dose. Applicant respectfully requests the Office withdraw the rejection of claims 26 and 32-40.

CONCLUSION

Applicant does not waive any substantive arguments Applicant may not have addressed concerning the propriety of the asserted claim rejections and reserves those

arguments for future responses or presentation. Applicant respectfully submits that the application is in condition for review and allowance.

Applicant's undersigned attorney may be reached by telephone at (715) 835-5232 or by facsimile at (715) 835-9890. All correspondence should be directed to the below listed address.

Respectfully Submitted,

/anthony j. bourget/

By: Anthony J. Bourget
Registration No. 36,753
Bourget Law, S.C.
1119 Regis Court, Suite 110
P.O. Box 81
Eau Claire, WI 54702

AJB: